IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

MFA.No. 865 of 2000(B)

OPMV.1648/1993 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOZHIKODE
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APPELLANT:

RETNAKARAN, AGED 27,
S/O.VASU, KUNNUMMAL HOUSE,
KANNAKIKKAL, P.O. VENGERI,
KOZHIKODE, KOZHIKODE.

BY ADV. SRI.JACOB ABRAHAM
SMT.KOCHUMOL KODUVATH

RESPONDENTS:
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1. K.V.AREEF, 25 YEARS,
S/O. K.V. MUHAMMED HAJI,
MELADATH VEEDU, P.O. MANIPURAM,
KODUVALLY, KOZHIKODE.

2. MUHAMMED SAJITH K.K., AGED 24,
S/O. M.MAMMU, "RAMLA MANZIL'
NEAR PARAPPAN POIL,
U.P.SCHOOL, AAROTH AMSOM,
THAMASSERY, KOZHIKODE.

3. THE BRANCH MANAGER,
THE ORIENTAL INSURANCE CO.LTD.
BRANCH OFFICE, KINGSWAY BILDGS.
MAVOOR ROAD, KOZHIKODE.

BY ADV. SRI.ANCHAL C.VIJAYAN FOR R3.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 16/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K. HEMA, JJ.

M.F.A. No. 865 of 2000

Dated this 16th day of October, 2007

JUDGMENT

Koshy,J:

Appellant-petitioner suffered serious injuries in a motor accident. He was knocked down by a car driven by the 2nd respondent. The car was owned by the first respondent and insured by the 3rd respondent. He claimed compensation of Rs.3,75,000/-. The accident occurred on 28.12.1992. According to the claimant, he was a coolie and getting Rs.1500/- per month. Even though the Tribunal accepted Rs.1500/- as the monthly income, the Tribunal deducted Rs.150/- for personal expenses and only Rs.1350/- was taken as the monthly income. We are of the opinion that since it is not a death case, he had to continue to incur personal expenses. The Tribunal ought to have taken Rs.1500/- as monthly income for calculation of compensation. Immediately after the incident, petitioner was taken to the Medical College Hospital where he was admitted as inpatient. Ext.A2 wound certificate would show lacerated wound, multiple abrasion left elbow and multiple abrasion both leg. Since there was a head injury also C.T. Scan was taken. Ext.A7 is a photocopy of the

C.T. Report dated 4.1.93 wherein the impression is as follows:

> "Small focal area of haemorrhage in the postero-left lateral aspect of the upper brainstem with associated subarachhoid blood in the adjacent (left) quadrigaminal cistern add posterior inter hemispheric fissure. This bifrontal subdural hygroma. No significant mass effect or brain oedema."

Ext.A8 is a treatment certificate dated 1.5.93 issued by a Lecturer in Surgery, Medical College, Kozhikode. It is stated therein that X-ray shows cervical fracture of C2, C3 Vertebra that he was given soft cervical collar and physiotherapy treatment. Ext.A9 is a disability certificate dated 4.3.1994 from Associate Professor of Medical College, according to which the petitioner has suffered partial permanent disability of 45%. Ext.C1 is a disability certificate dated 5.5.1998 from the Medical board which shows that he is having sequela of intracerebral injury with spastic hemeplegia left side. It is stated that he is having mild conductive hearing loss which cannot be attributed to the accident because none of documents produced by the petitioner would show that he had obtained treatment in respect of the same. The disability of the petitioner due to injuries it the accident has been assessed at 40%. The Tribunal accepted 40% disability.

2. Learned counsel for the appellant contended that since there was head injury, appellant cannot carry on coolie work and therefore

he should be granted disability compensation for 100% disability. We are of the opinion that, considering the medical certificate produced and disability assessed by the medical board it is not fair to grant 100% disability and 40% disability granted will be sufficient. There is no reason to disbelieve the medical certificate issued by the board. The claimant was aged 27 years at the time of accident. The Tribunal fixed 17 as the multiplier. According to II schedule, 18 is the multiplier for person aged 27. Therefore 18 should be adopted as the multiplier. Therefore the compensation payable will be Rs.1,29,600/- (1500 x 12 x 40/100 x18). The Tribunal, even though calculated compensation on the basis that there is 40% disability, only 50% of the above was taken for calculating the compensation stating that 40% was a moderate disability assessed by the medical board. Appellant has suffered hemeplegia and he is unable to do any hard work and he may not be able to do any manual work. The evidence adduced would show that there is no reason to reduce compensation granted for 40% disability. There is no dispute that C.T.Scan report and the certificate of the Professor of the Medical College would show that what is suffered is permanent disability. As far as, head injury is concerned he would have suffered paraplegia. If it was not moderate as he suffered only hemeplegia. With that he can do any

coolie work. He may not be able to go for any employment. If that be so the compensation payable will be Rs.1,29,600/-. The Tribunal, awarded only Rs.55,000/- as compensation for loss of earning capacity. Apart from the above, for disability an amount of Rs.25,000/- was awarded. We are of the opinion that due to the disability loss of earning capacity was assessed and that he cannot again be granted compensation for disability. Therefore, Rs.25,000/- has to be deducted. Therefore additional amount of compensation payable for disability and loss of earning capacity will be Rs.1,04,600/-. Appellant was in the hospital as an inpatient for 65 days. Only Rs.2000/- was allowed for treatment expenses on the ground that no medical bills were produced. When a person is admitted in the hospital, there will be so many other expenses other than medical expenses. He had hemeplegia and required continuous treatment and care. Hence, non-production of bills will not be the sole reason for refusing compensation for reasonable treatment expenses. C.T. Scan was taken. We award Rs.5000/- more for treatment expenses and another Rs.3000/- for by-stander's expenses. Thus, the total amount of compensation will be Rs.1,12,600/-.

3. The Tribunal found that there is 15% contributory negligence on the side of the appellant. In the wound certificate it is mentioned

that there was smell of alcohol. In view of the 9above we are of the opinion that there is 15% contributory negligence on the side of the appellant. Therefore, after deducting 15% towards contributory negligence, the additional compensation will be Rs.95710/-. The additional compensation of Rs. 95,710/- should be deposited by the 3rd respondent Insurance company with 7.5% interest from the date of application till deposit over and above the amount awarded by the Tribunal.

M.F.A. is partly allowed.

J.B. KOSHY, JUDGE.

K. HEMA, JUDGE.

Krs.

J.B.KOSHY & K. HEMA, JJ.

M.F.A. No. 865 of 2000

Dated this 16th day of October, 2007

JUDGMENT